

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-09-1486 MHP

ANTONIO MOLINAR,

Plaintiff(s),

vs.

UNITED STATES OF AMERICA and the UNITED
STATES POSTAL SERVICE,

Defendant(s).

**ORDER DISMISSING
COMPLAINT**

Plaintiff files this action seeking an order that the defendants deliver his mail in accordance with his directions and that the defendant conduct an investigation into his misdirected mail. Unfortunately, these are not claims over which the court can exercise jurisdiction even though they involve the United States Postal Service.

A suit against the Postal Service is a suit against the United States which possesses sovereign immunity absent a waiver of that immunity. The waiver must be specific and in the absence of such a waiver suit is barred. The Federal Tort Claims Act grants such a waiver. See 28 U.S.C. §1346. However, section 2680(b) of Title 28 explicitly exempts from the waiver “any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.” Thus, this Circuit has held that a claim against the Postal Service for misdirection or loss of mail is barred by sovereign immunity and must be dismissed. Anderson v. United States Postal Service, 761 F.2d 527 (9th Cir. 1985).

1 Furthermore, it is equally clear that the court has no power to compel the postal inspector to
2 perform the discretionary duty of conducting an investigation. See Roots v. J.S. Callahan, 475 F.2d
3 751 (5th Cir. 1973).

4 For the foregoing reasons this court is without jurisdiction to grant the relief sought and the
5 complaint in this action must be dismissed and is DISMISSED with prejudice.

6
7 Date: April 15, 2009


MARILYN HALL PATEL
Judge, United States District Court
Northern District of California